

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 682 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
  4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No

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PATEL JETHABHAI NATHABHAI

Versus

KHANT SHANABHAI SARDARBHAI  
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Appearance:

MR DF AMIN for Petitioners

MR PM VYAS for Respondent No. 1, 2, 3  
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CORAM : MR.JUSTICE A.R.DAVE

Date of decision: 07/07/2000

ORAL JUDGEMENT

Being aggrieved by the judgment and decree passed  
in Special Civil Suit No. 32/74 by the Civil Judge  
(S.D.), Godhra, dated 15.10.1979, this appeal has been

filed by the original plaintiffs.

2. For the sake of convenience, parties to the litigation have been described as they were arrayed before the trial court. The case of the plaintiffs in the plaint was that the defendants were in need of money as they were not having sufficient funds to meet their household expenses and therefore the defendants wanted to borrow a sum of Rs. 11,900/- from the plaintiffs. So as to help the defendants, the plaintiffs had lent a sum of Rs. 11,900/- to the defendants on 22.4.74 and while accepting the said amount, the defendants had executed a writing on 22.4.74, which was duly signed by the defendants after affixing six revenue stamps of 10 ps. each. The writing was executed in presence of the plaintiffs and five other witnesses. The document which was in the nature of receipt was written by Shri Hirabhai Sankalbhai Patel and in security of repayment of the said amount, the defendants had agreed that if the said amount is not returned, defendant No. 1 would give his land admeasuring 2 gunthas situated at village Ladpur, Taluka Santrampur to the plaintiffs. When the amount was not paid to the plaintiffs in spite of demands, they were constrained to file the suit.

3. The defendants had filed their written statement stating that they had never borrowed money from the plaintiffs and no amount was ever paid by the plaintiffs to the defendants. The case of the defendants in the written statement was that the plaintiffs had in fact cheated the defendants. They were beaten and they were constrained to put their signatures on the writing which was given to the defendants and being aggrieved by the said fact, the defendants had also filed a criminal complaint on 23.4.74 in the court of Judicial Magistrate (First Class), Santrampur. They had also relied upon the medical certificate given by a doctor showing that injuries were inflicted on defendant No. 2 by the plaintiffs. Upon perusing the pleadings, the trial court had raised the following issues at Ex. 18.

- (1) Does the plaintiffs prove advance of Rs. 11,900/and the execution of the writing dated 22.4.1974 in the manner and the context stated in plaint para 1?
- (2) Is it proved that the defendant No. 3 took the liability for the suit by contemporaneous writing?
- (3) Do the defendants prove that the aforesaid

writing was got executed by threats and force as alleged in the latter part of para 4 of the written statement Ex. 17?

(4) Is it shown that the consideration for the suit debt is illegal? If yes, what is its effect?

(5) What is due to the plaintiff and against whom should the decree be passed?

(6) What order and what decree?

The first two issues were answered in the negative. Issues Nos. 3 and 4 were answered in the affirmative and the suit was finally dismissed.

4. The case of plaintiff No. 1 at the time of his examination-in-chief was absolutely different. It was stated by plaintiff No. 1 in the examination-in-chief that he had purchased Kyari land of defendant No. 1 for Rs. 11,900/- and for that purpose the amount was paid to defendant No. 1. The said amount was paid four days before 22.4.74. It is pertinent to note that the writing which is alleged to have been executed by the defendants is dated 22.4.74. The witnesses who were supporting the plaintiffs had stated that the amount was paid to the defendants in their presence on 22.4.74.

5. The trial court considered the evidence of the witnesses who were said to be present at the time when the amount in question was paid to the defendants. The witnesses had stated that the amount was paid on 22.4.74 when Ex. 73 was executed whereas plaintiff No. 1 had stated that the amount had already been paid four days before the date on which the document was executed.

6. The trial court also considered the deposition of the Medical Officer who had examined defendant No. 2 on 23.4.74 and had recorded the fact that injuries were inflicted upon defendant No. 2 on 21.4.74. The trial court found that there was substance in the complaint which was filed by the defendants against the plaintiffs.

7. Upon perusal of the writing executed by the defendants, the trial court found that the writing was in the nature of sale deed whereby the lands belonging to the defendants were sold to the plaintiffs and there was no reference to the fact that the amount was lent to the defendants by the plaintiffs as averred by the plaintiffs in the plaint.

8. Looking to the variance in the pleadings and the evidence and the contradictions made by the witnesses and the plaintiffs in the depositions, the trial court did not believe the case put forward by the plaintiffs and dismissed the suit.

9. I have heard learned advocate Shri D.F. Amin appearing for the appellants. It has been submitted by him that the suit ought not to have been dismissed as the writing was executed by the defendants to the effect that the defendants had received a sum of Rs. 11,900/- from the plaintiffs. In that event, according to Mr. Amin, the trial court ought to have believed that the said amount was in fact paid to the defendants and therefore the suit ought to have been decreed.

10. Upon hearing learned advocate Shri Amin, I am not convinced that the suit was wrongfully dismissed. Upon perusal of the relevant documents and the evidence adduced before the trial court, it is very clear that the trial court was right in coming to the conclusion that the writing in the nature of acknowledgment was not voluntarily signed by the defendants. The trial court was justified in coming to the conclusion that only on account of coercion the said writing was executed. It is pertinent to note the contradictions made by the plaintiffs and the witnesses in the matter of the nature of the transaction in pursuance of which the cash was paid by the plaintiffs to the defendants. There are serious discrepancies with regard to the date and place on which the said writing was executed. Evidence of the medical officer was also rightly considered by the trial court and his deposition clearly lends support to the version of the defendants that only on account of coercion, the said writing was executed by the defendants. Evidence of the medical officer regarding injuries inflicted upon defendant No. 2 lends support to the defence of the defendants.

11. Looking to the contradictions made in the evidence adduced by the witnesses and the plaintiffs it is doubtful to believe that the plaintiffs had given a sum of Rs. 11,900/- to the defendants. I do not find any illegality committed by the trial court in the matter of appreciation of evidence and it cannot be said that the conclusions arrived at by the trial court, after appreciation of the evidence and upon perusal of the record, is illegal or incorrect in any manner.

12. In the circumstances, I do not find any substance in this appeal and the appeal is dismissed with no order

as to costs.

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